

2003-20

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:

GTE Government Systems
Mountain View, California

GTE Corporation,
Respondent

AMENDED UNILATERAL
ADMINISTRATIVE ORDER FOR
REMOVAL ACTION

U.S. EPA Region IX

CERCLA Docket No. 9-2003-003 2003-20

Proceeding Under Sections 106(a) and 107
of the Comprehensive Environmental
Response, Compensation, and Liability Act,
as amended, 42 U.S.C. §§ 9606(a) and 9607.

I. AUTHORITY AND GENERAL PROVISIONS

1. This Amended Unilateral Administrative Order ("Order") is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended, ("CERCLA"). The President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. This authority has been duly redelegated to the Branch Chief, Superfund Division, EPA Region 9 ("Branch Chief"), by delegation dated November 16, 2001.

2. This Order amends EPA's Unilateral Administrative Order issued on January 17, 2003, pertaining to property located at 100 Ferguson Drive in Mountain View, California, the "GTE Site" or "Site." This Order requires Respondent to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

II. PARTIES BOUND

1. This Order shall apply to and be binding on Respondent GTE Corporation, and Respondent's heirs, directors, officers, employees, agents, receivers, trustees, successors and assigns. No change in ownership or operational status will alter Respondent's obligations under this Order. Notwithstanding the terms of any contract or agreement, Respondent is responsible for compliance with this Order and for ensuring that its employees, contractors, and agents comply with this Order.

2. Respondent shall provide a copy of this Order to all contractors, subcontractors, and consultants that are retained by Respondent to perform the work required by this Order within three (3) days after the Effective Date of this Order or within three (3) days of retaining their services, whichever is later.

III. DEFINITIONS

1. Unless otherwise expressly provided herein, the terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations.

"Action Memorandum" shall mean the EPA Amended Action Memorandum relating to the Site signed on February 6, 2002, by the Superfund Branch Chief, EPA Region IX, and all attachments thereto. The "Action Memorandum" is attached hereto as Attachment A.

"Branch Chief" shall mean the Chief of the Response, Planning and Assessment Branch of EPA Region IX.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

“Day” shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Order as provided in Section VIII.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“DTSC” shall mean the State of California Department of Toxic Substances Control and any successor departments or agencies of the State.

“Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, any monies paid to secure access, including the amount of just compensation, emergency response, and work takeover.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Oversight Costs” shall mean all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order.

“Paragraph” shall mean a portion of this Order identified by an Arabic numeral.

“Parties” shall mean EPA and Respondent.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

“Respondent” shall mean GTE Corporation.

“Response Action” shall be those specific work items Respondent is required to perform at the Site pursuant to this Order, as set forth in Section X of this Order.

“Section” shall mean a portion of this Order identified by a Roman numeral.

“Site” shall mean that real property associated with the former GTE Government Systems facility located at 100 Ferguson Drive in Mountain View, California, and any other property at which hazardous substances exist from the operation of that facility.

“State” shall mean the State of California and its political subdivisions, including DTSC.

“UAO” or “Order” shall mean this Amended Unilateral Administrative Order, EPA docket number 9-2002-0003, and all exhibits attached hereto. In the event of a conflict

between this Order and any exhibit, this Order shall control.

“Waste Material” shall mean 1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and 3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

“Work” shall mean all activities Respondent is required to perform under this Order.

IV. FINDINGS OF FACT

1. **Site description**

a. From 1952 until 1993, GTE Government Systems owned and operated a facility on a 60-acre property located at 100 Ferguson Drive in Mountain View, California. Prior to 1952, the property had been used primarily for agricultural purposes. GTE Government Systems utilized the facility for the design and assembly of electronics and communications equipment.

b. In 1995, GTE Government Systems sold approximately two-thirds (2/3) of the facility property for residential development. In 1999, GTE Corporation sold the remainder of the GTE Government Systems facility property to General Dynamics. The facility property is now fully developed for primarily residential purposes with some limited commercial use.

2. **Site characteristics and ownership**

a. None of the facility property is currently owned by Respondent. The one-third (1/3) of the former facility that is currently owned by General Dynamics is used for industrial purposes. The remaining two-thirds (2/3) was developed by three developers and is now owned by individual property homeowners.

b. GTE Government Systems operated at the facility from 1952 to 1993. After a

number of mergers in 1991 and 1995, GTE Government Systems became a part of its former parent company, GTE Corporation. In 1999, GTE Corporation sold a portion of its GTE Government Systems operations and the remaining facility property to General Dynamics.

3. Release Characteristics

a. During its operation from 1952 to 1993, GTE Government Systems used and stored hazardous substances at its Mountain View facility. GTE Government Systems' primary operations at the Site included design and assembly of electronic and communications equipment for the United States Department of Defense. In the production process, GTE Government Systems utilized several solvents, including, but not limited to, volatile organic compounds ("VOCs") such as trichloroethylene ("TCE") and 1,1-trichloroethane ("1, 1, 1-TCA"). Other VOCs found to be present in the groundwater and Site soils include chloroform, dichloroethane ("DCA"), dichloroethene ("DCE") and tetrachloroethene ("PCE").

b. In 1988, EPA issued to GTE Government Systems a RCRA § 3013 Order to investigate the extent of contamination at the Site from operations and to determine whether groundwater contamination at the Site contributed to the nearby Middlefield-Ellis-Whisman ("MEW") Superfund site. That investigation determined that the TCE groundwater contamination at the GTE Site was not commingled with the MEW site contamination. However, investigations conducted from 1988 to 1993 did identify VOCs in the groundwater at the GTE facility associated with three (3) of the facility's seven (7) buildings: Building 1 to the south, Building 2 to the northwest and Building 6 to the northeast of the property. See *GTE Government Systems Final Groundwater Remediation Plan*, McLaren Hart, ("GTE Final GRP Plan," December 1993), at 3. Sampling and monitoring identified soil contamination and groundwater plumes contaminated with VOCs, primarily TCE, in the vicinity of each of the three buildings. The highest concentration of TCE groundwater contamination detected - 3,300 ppb TCE - was located beneath Building 1.

c. In 1994, EPA approved GTE plans to extract and treat contamination from the three groundwater plumes, to conduct soil vapor extraction ("SVE") in the Building 6 area, and

conduct continued groundwater monitoring throughout the Site.

d. 1997 soil vapor sampling by GTE in the former leachfield area in the area of Building 1 indicated that a variety of VOCs remained in the soil. See *Soil Investigation, GTE Government Systems, Woodward-Clyde* ("GTE Soil Investigation" January 1998). 1998 soil vapor sampling in the former leachfield area indicated that a variety of VOCs remained in the soil at levels as high as 83,000 micrograms/cubic meter ($\mu\text{g}/\text{m}^3$). Thereafter, GTE conducted semi-annual soil vapor sampling in the Building 1 area at five (5) feet below ground surface ("bgs") in 1999 and 2000. See *Soil Gas Monitoring Plan May 2000 Report for the former GTE Government Systems, Mountain View, CA Facility, URS* ("Soil Gas Monitoring Report, August 2000"). TCE was detected in soils at levels as high as 130,000 $\mu\text{g}/\text{m}^3$ in 1999. Although soil vapor concentrations appeared to be dropping during groundwater extraction, the highest levels were still approximately 60,000 $\mu\text{g}/\text{m}^3$ of TCE in 2000.

e. Due to the levels of TCE identified in the shallow soil depths in the Building 1 area, in 2001 EPA conducted indoor air sampling at seven (7) of the residences overlying the highest concentrations of contamination in the Building 1 groundwater plume. Two rounds of air sampling conducted at these residences indicated indoor air TCE contamination at the home identified as House 3 at levels averaging 12 $\mu\text{g}/\text{m}^3$ in April 2001 and 25 $\mu\text{g}/\text{m}^3$ in November 2001.

f. In October 2002, Region IX incorporated into its October 2002 Preliminary Remediation Goal ("PRG") Table an updated provisional TCE toxicity value for TCE. The PRG for TCE in ambient air, which is calculated as a 1×10^{-6} excess cancer risk, equates to 0.017 $\mu\text{g}/\text{m}^3$ TCE. Application of the provisional toxicity value for airborne exposure to TCE to the levels detected in House 3 translates into a carcinogenic risk greater than one in a thousand, or 1×10^{-3} .

g. House 3 is presently occupied by a family with a toddler. Threats to public health or the environment at the GTE Site stem from the potential continued migration of TCE from subsurface soils and groundwater into House 3. The indoor air TCE contamination presents an

imminent and substantial endangerment to those currently residing in House 3.

V. CONCLUSIONS OF LAW

1. The Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. Respondent GTE Corporation is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
3. Respondent is a "liable" party, as that term is defined in Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as the successor corporation to the entity which owned and operated a facility at a time during which hazardous substances were disposed of, and is subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
4. TCE is a "hazardous substance," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
5. The past disposal and migration of hazardous substances at the Site constitute a "release" and continuing threat of "release," as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
6. The actual or threatened release of hazardous substances from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment, within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VI. DETERMINATIONS

Based on the Findings of Fact and the Conclusions of Law stated herein, EPA has made the following determinations:

1. That an actual or threatened release of hazardous substances from the Site

presents an imminent and substantial endangerment to the public health or welfare or the environment.

2. That conditions at the Site constitute a threat to public health or welfare or the environment based on consideration of the factors set forth in the NCP at 40 C.F.R. § 300.415(b), and that the actions required by this Order are necessary to protect the public health or welfare or the environment.

3. That the actions required by this Order, if properly performed, will be consistent with the NCP and are appropriate to protect the public health or welfare or the environment.

VII. NOTICE TO THE STATE

Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), EPA has notified the State of the issuance of this Order by providing a copy of this Order.

VIII. EFFECTIVE DATE

This Order is deemed effective upon signature by the Branch Chief (the "Effective Date"), unless a conference is requested as provided herein. If such a conference is requested, this Order shall be effective the second (2nd) day following the day of such conference unless modified in writing by EPA.

IX. ORDER

Based on the foregoing, Respondent is hereby ordered to comply with the following provisions, including but not limited to all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order. Respondent shall perform the specific work set forth below under the direction of the EPA On-Scene Coordinator ("OSC"), and shall comply with all requirements of this Order until EPA provides written notice that the Response Action is complete.

X. WORK TO BE PERFORMED

Respondent shall perform, at a minimum, all activities necessary to implement the removal action described in the attached Action Memorandum. The actions to be implemented generally include, but are not limited to, the following:

1. Work Plan

a. On December 13, 2002, Respondent submitted to EPA for approval a partial draft of a Work Plan for the implementation of the removal action described below. The draft Work Plan provided a concise description of the activities to be conducted to comply with the requirements of this Order, a proposed schedule for implementing and completing such activities, and qualifications of its primary contractor for these activities. EPA provided to Respondent conditional approval of the partial draft Work Plan. The partial draft Work Plan schedule requires the installation and operation of an active soil depressurization system at House 3 by January 17, 2003.

b. In accordance with the schedule provided in the partial draft Work Plan, Respondent submitted a completed draft Work Plan to EPA, which included the following components, on January 8, 2002:

- (i) written public communications strategy;
- (ii) quality assurance plan;
- (iii) monitoring plan;
- (iv) sampling plan.

c. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within five (5) days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Order.

2. Respondent shall not commence any Work except in conformance with the terms of this Order. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 1(c) of this Section.

3. Health and Safety Plan. Within thirty (30) days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Order. This plan shall be prepared in accordance with EPA's *Standard Operating Safety Guide* (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the Health and Safety Plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the Health and Safety Plan shall also include contingency planning. Respondent shall incorporate all changes to the Health and Safety Plan recommended by EPA and shall implement the plan during the pendency of the removal action.

4. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate, *Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures* (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, *Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs* (American National Standard, January 5, 1995), and *EPA Requirements for Quality Management Plans (QA/R-2)* (EPA/240/B-01/002, March 2001), or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than forty-eight (48) hours in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

5. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for post-removal site control consistent with Section 300.415(I) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondent shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

6. Reporting.

a. In accordance with the draft Work Plan schedule, Respondent shall provide the following reports to EPA concerning actions undertaken pursuant to this Order:

(i) within three (3) business days of system installation, Respondent will provide written confirmation of the installation;

(ii) within seven (7) business days after receipt of analytical results from sampling events scheduled for the first three days of system operation, Respondent will provide a report on those results;

(iii) within seven (7) business days after receipt of analytical results from interior air sampling, Respondent will provide a report on those results;

(iv) within seven (7) business days after receipt of analytical results from monthly system discharge sampling, Respondent will provide a report on those results;

(v) within seven (7) business days of any maintenance or repairs conducted on the system, Respondent will provide a report to EPA regarding the nature of the maintenance or repair conducted.

b. Respondent shall submit three (3) copies of all plans, reports or other submissions required by this Order or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form.

7. Final Report. Within thirty (30) days after completion of all Work required by this Order, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

8. Off-Site Shipments.

a. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards.

i. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by this Section, Paragraph 8 as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

9. Selection of Contractor(s) and Subcontractor(s)

a. All Work performed by or on behalf of Respondent pursuant to this Order shall be performed by qualified individuals or contractors with expertise in hazardous waste site investigation or remediation, unless agreed otherwise by EPA. Respondent has provided to EPA the name and qualifications of the primary contractor it will use for this action, and EPA has approved of that selection. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least five (5) days prior to commencement of such Work.

b. If EPA disapproves of any person's or contractor's technical or work-experience

qualifications, EPA will notify the Respondent in writing. Respondent shall, within five (5) working days of Respondent's receipt of EPA's written notice, notify EPA of the identity and qualifications of the replacement(s). Should EPA disapprove of the proposed replacement(s), Respondent shall be deemed to have failed to comply with the Order.

c. Respondent may propose to change the individual(s), contractor(s), or subcontractor(s) retained to direct and supervise the work required by this Order. If Respondent wishes to propose such a change, Respondent shall notify EPA in writing of the name, title, and qualifications of the proposed individual(s), proposed contractor(s), or proposed subcontractor(s), and such individual(s), contractor(s) or subcontractor(s) shall be subject to approval by EPA in accordance with the terms of Paragraphs 9.a. and b. of this Section, above. The naming of any replacement(s) by Respondent shall not extend any deadlines required by this Order nor relieve Respondent of any of its obligations to perform the work required by this Order.

10. Respondent will notify EPA of field activities at least twenty-four (24) hours before initiating them so that EPA may adequately schedule oversight tasks.

11. At least five (5) days prior to commencing any work at the Site pursuant to this Order, Respondent shall submit to EPA a certification that Respondent or its contractor(s) and subcontractor(s) have adequate insurance coverage or other ability, subject to approval of EPA, to compensate for liabilities for injuries or damages to persons or property that may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Adequate insurance shall include comprehensive general liability insurance and automobile insurance with limits of five hundred thousand dollars (\$500,000.00), combined single limit. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then Respondent need provide only that portion of the insurance described above that is not maintained by such contractor or subcontractor. Respondent shall ensure that such insurance or indemnification is maintained for the duration of performance of the work required by this Order. Respondent shall ensure that the United States is named as an additional insured on any

such insurance policies.

12. General Work Provisions

- a. All Work required by this Order shall be conducted in accordance with: CERCLA; the NCP; EPA Region IX's "*Guidance for Preparing Quality Assurance Project Plans for Superfund Remedial Projects*" (EPA, November 1992); any final amended or superseding versions of such documents provided by EPA; other applicable EPA guidance documents; and any report, document or deliverable prepared by EPA due to Respondent's failure to comply with this Order.
- b. All plans, schedules, and other reports that require EPA's approval and are required to be submitted by the Respondent pursuant to this Order shall, after approval by EPA, be incorporated into and enforceable under this Order.
- c. EPA will oversee Respondent's activities as specified in Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1). Respondent will support EPA's initiation and implementation of activities needed to carry out its oversight responsibilities. Respondent also shall cooperate and coordinate the performance of all work required to be performed under this Order with all other work being performed at the Site, including work performed by EPA, the State, or any other party performing work at the Site with the approval of EPA.
- d. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state and federal laws and regulations except as provided in CERCLA section 121(e) and 40 C.F.R. 300.415(i). In accordance with 40 C.F.R. 300.415(i), all on-Site actions required pursuant to this order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental, state environmental, or facility siting laws.

XI. NOTICE OF INTENT TO COMPLY

1. Respondent shall, within four (4) days of the Effective Date of this Order, provide written notice to EPA of Respondent's irrevocable intent to comply with this Order. Failure to respond, or failure to agree to comply with this Order, shall be deemed a refusal to comply with this Order.

XII. OPPORTUNITY TO CONFER

1. Respondents may, within four (4) days of receipt of this Order, request a conference with the Section Chief of the Response, Planning and Assessment Branch in the EPA Region IX - Superfund Division, or whomever the Section Chief may designate. If requested, the conference shall occur within five (5) days of the request, unless extended by mutual agreement of the Parties, at EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.

2. At any conference held pursuant to Respondent's request, Respondent may appear in person or be represented by an attorney or other representative. If Respondent desires such a conference, Respondent shall contact Bethany Dreyfus, EPA Assistant Regional Counsel, at (415) 972-3886.

3. The purpose and scope of any conference held pursuant to this Order shall be limited to issues involving the implementation of the Response Action required by this Order and the extent to which Respondent intends to comply with this Order. If such a conference is held, Respondent may present any evidence, arguments or comments regarding this Order, its applicability, any factual determinations on which the Order is based, the appropriateness of any action that the Respondent is ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to EPA within three (3) days following the conference. This conference is not an evidentiary hearing and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order or to seek resolution of potential liability, and no official record of the conference will be made. If no conference is requested, any such evidence, arguments or comments must be submitted in writing within four (4) days following the Effective Date of this

Order. Any such writing should be directed to Bethany Dreyfus, at the following address and fax number:

Environmental Protection Agency, Region IX, ORC-3
75 Hawthorne Street, ORC-3
San Francisco, CA 94105
Fax number (415) 947-3570

4. Respondent is hereby placed on notice that EPA will take any action that may be necessary in the opinion of EPA for the protection of public health and welfare and the environment, and Respondent may be liable for the costs of those actions under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

XIII. ENDANGERMENT AND EMERGENCY RESPONSE

1. In the event of any action or occurrence during the performance of the Work that causes or threatens to cause a release of a hazardous substance or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action(s) to prevent, abate, or minimize the threat, and shall immediately notify EPA's OSC. If EPA's OSC is not available, Respondent shall notify the EPA Emergency Response Unit, Region 9, by calling (415) 947-4400. Respondent shall take such action(s) in consultation with EPA's OSC and in accordance with all applicable provisions of this Order, including but not limited to the Health & Safety Plan.

2. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at (415) 947-4400 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

3. Nothing in the preceding Paragraphs shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances at or from the Site.

XIV. MODIFICATION OF REQUIRED WORK

1. The OSC may make modifications to any plan or schedule or Statement of Work in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

2. If Respondent seeks permission to deviate from any approved work plan or schedule or Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 1 of this Section.

3. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XV. DESIGNATED PROJECT MANAGERS

1. EPA designates Hedy Ficklin, an employee of EPA Region IX, as its OSC and designated representative at the Site, who shall have the authorities, duties, and responsibilities vested in the OSC by the NCP. This includes, but is not limited to, the authority to halt, modify, conduct, or direct any tasks required by this Order or undertake the Response Action (or portions thereof) when conditions at the Site present or may present a threat to public health or welfare or the environment as set forth in the NCP.

2. Within three (3) days of the Effective Date of this Order, Respondent shall designate a Project Coordinator who shall be responsible for overseeing Respondent's implementation of this Order. To the maximum extent possible, all oral communications between Respondent and EPA concerning the activities performed pursuant to this Order shall be directed through EPA's OSC and Respondent's Project Coordinator.

3. All documents, including progress and technical reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be delivered in accordance with Section X, Paragraph 6.b. of this Order.

4. EPA and Respondent may change their respective OSC and Project Coordinator. Notification of such a change shall be made by notifying the other party in writing at least five (5) days prior to the change, except in the case of an emergency, in which case notification shall be made orally followed by written notification as soon as possible.

5. The absence of the EPA OSC from the Site shall not be cause for the stoppage of work. Nothing in this Order shall limit the authority of the EPA OSC under federal law.

XVI. ACCESS

1. Respondent shall permit EPA and its authorized representatives to have access at all times to the Site to monitor any activity conducted pursuant to this Order and to conduct such tests or investigations as EPA deems necessary. Nothing in this Order shall be deemed a limit on EPA's authority under federal law to gain access to the Site.

2. To the extent that Respondent requires access to land other than land that owned by Respondent to carry out the terms of this Order, Respondent shall, within ten (10) days of the Effective Date of this Order, obtain access for: EPA, its contractors, oversight officials, or other authorized representatives; state oversight officials and state contractors; and Respondent and its authorized representatives. If Respondent fails to gain access within ten (10) days, it shall continue to use best efforts to obtain access until access is granted. For purposes of this

Paragraph, "best efforts" include, but are not limited to, the payment of money as consideration for access. If access is not provided within the time referenced above, EPA may obtain access under Sections 104(e) or 106(a) of CERCLA and recover any costs incurred.

3. Respondent shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

4. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

5. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent.

However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

6. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XVII. REIMBURSEMENT OF OVERSIGHT COSTS

1. Respondent shall reimburse EPA, on written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order. EPA may submit to Respondent on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. Respondents shall, within thirty (30) days of receipt of the bill, remit by cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Attn: Donald Loi
Region IX
Attn.: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

Respondent shall send a cover letter with any check and the letter shall identify the Site by name and make reference to this Order, including the EPA docket number stated above. Respondent shall send simultaneously to the EPA OSC notification of any amount paid, including a photocopy of the check.

2. Interest at the rate established under Section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or objection to any portion of the costs.

XVIII. DELAY IN PERFORMANCE

1. Any delay in the performance of any requirement of this Order that, in the EPA's sole judgment and discretion, is not properly justified by Respondent under the terms of this Section shall be considered a violation of this Order. Any delay in performance of any requirement of this Order shall not affect any other obligation of Respondent under the terms and conditions of this Order.
2. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's primary OSC within twenty-four (24) hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within three (3) days after notifying EPA by telephone, Respondent shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order are not justifications for any delay in performance.
3. If Respondent is unable to perform any activity or submit any document within the time required under this Order, Respondent may, prior to the expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay. The submission of an extension request shall not itself affect or extend the time to perform any of Respondent's obligations under this Order.
4. If EPA determines that good cause exists for an extension of time, it may grant a request made by Respondent pursuant to the previous Paragraph, and specify in writing to Respondent the new schedule for completion of the activity or submission of the document for which the extension was requested.

XIX. RECORD RETENTION

1. Respondent shall maintain, during the pendency of this Order, and for a minimum of five (5) years after EPA provides notice to Respondent that the response action has been completed, a depository of the records and documents required to be prepared under this Order. In addition, Respondent shall retain copies of the most recent version of all documents that relate to hazardous substances at the Site and that are in its possession or in the possession of its employees, agents, contractors, or attorneys. After this five-year period, Respondent shall notify EPA at least thirty (30) days before the documents are scheduled to be destroyed. If EPA so requests, Respondent shall provide these documents to EPA.

2. The Administrative Record supporting this removal action is available for review at the Superfund Records Center, 95 Hawthorne Street, 4th Floor, San Francisco, California, 94105, (415) 536-2000.

XX. ENFORCEMENT AND RESERVATIONS

1. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or otherwise incurred at the Site and not reimbursed by Respondent. This reservation shall include, but not be limited to, past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight costs, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

2. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the Response Action (or any portion thereof) and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

3. Nothing in this Order shall preclude EPA from taking any additional enforcement action, including modification of this Order or issuance of additional Orders, or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. § 9607(a), *et seq.*, or any other ap-

plicable law. Respondent may be liable under CERCLA Section 107(a) for the costs of any such additional actions.

4. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA, or any other applicable statutes or regulations.

5. Notwithstanding compliance with the terms of this Order, including the completion of the EPA-approved Response Action, Respondent is not released from liability, if any, for any enforcement actions beyond the terms of this Order taken by EPA.

6. EPA reserves the right to take any enforcement action pursuant to CERCLA or any other legal authority, including the right to seek injunctive relief, monetary penalties, reimbursement of response costs, and punitive damages for any violation of law or this Order.

7. EPA expressly reserves all rights and defenses that it may have, including the EPA's right both to disapprove of work performed by Respondent and to request the Respondent to perform tasks in addition to those detailed in Section X of this Order.

8. This Order does not release Respondent from any claim, cause of action, or demand in law or equity, including, but not limited to, any claim, cause of action, or demand that lawfully may be asserted by representatives of the United States or the State.

9. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as relieving Respondent of its obligation to obtain such formal approval as may be required by this Order.

XXI. SEVERABILITY

If any provision or authority of this Order or the application of this Order to any circumstance is held by a court to be invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby, and the remainder of this Order shall remain in force.

XXII. DISCLAIMER

The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or its employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States shall be held as a party to any contract entered into by Respondent, or its employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

XXIII. PENALTIES FOR NONCOMPLIANCE

Respondent is advised, pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), that willful violation or subsequent failure or refusal to comply with this Order, or any portion thereof, may subject Respondent to a civil penalty of up to \$27,500.00 per day for each day in which such violation occurs, or such failure to comply continues. Additionally, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), failure to comply with this Order, or any portion thereof, without sufficient cause may also subject Respondent to liability for punitive damages in an amount three times the amount of any cost incurred by the United States as a result of the failure of Respondent to take proper action.

XXIV. ADDITIONAL REMOVAL ACTIONS

If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice

from EPA that additional removal actions are necessary to protect public health, welfare or the environment, Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Section X of this Order. Upon EPA's approval of the plan pursuant to Section X, Paragraph 1(c), Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XV, Paragraph 1 of this Order.

XXV. TERMINATION AND SATISFACTION

The provisions of this Order shall be deemed satisfied on Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that all of the terms of this Order, including any additional tasks that EPA has determined to be necessary, have been completed.

Unilateral Administrative Order, Docket No. 9-2002-0003

IT IS SO ORDERED:

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

By: 

Daniel A. Meer
Chief, Response, Planning and Assessment Branch
EPA, Region IX

Date: 7 February 2003